

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R01-OAR-2004-ME-0001; A-1-FRL-]

**Approval and Promulgation of Air Quality Implementation Plans;
Maine; Approval of State Implementation Plan Revision to PM10 PSD Increments**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Maine. This revision establishes maximum allowable increases in particulate matter concentration for the prevention of significant deterioration (PSD) program, where particulate matter is measured as particulates with a mean aerodynamic diameter of 10 microns or less ("PM10"), rather than as total suspended particulates (TSP).

DATES: This direct final rule will be effective [Insert date 60 days from date of publication in the Federal Register], unless EPA receives adverse comments by [Insert date 30 days from date of publication in the Federal Register]. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the Federal Register, informing the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to Dan Brown, Acting Unit Manager, Air Permits, Toxics, and Indoor Air Programs, Office of Ecosystem Protection (mail code CAP) U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street,

Todd
Suite 1100, Boston, MA 02114-2023. Comments also may be submitted electronically or through hand delivery/courier; please follow the detailed instructions described in Part (I)(B)(1)(i) through (iv) of the Supplementary Information section.

FOR FURTHER INFORMATION CONTACT: Ian D. Cohen, Air Permits, Toxics, and Indoor Air Programs Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (CAP), Boston, MA 02114-2023, (617) 918-1655, cohen.ian@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. How Can I Get Copies Of This Document and Other Related Information ?

1. *The Regional Office has established an official public rulemaking file available for inspection at the Regional Office.* EPA has established an official public rulemaking file for this action under Regional Material EDocket Number R01-OAR-2004-ME-0001. The official public file consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public rulemaking file does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public rulemaking file is the collection of materials that is available for public viewing at the Office of Ecosystem Protection,

U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the For Further Information Contact section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding federal Holidays.

2. *Electronic Access.* An electronic version of the public docket is available through EPA's Regional Material EDocket (RME) system, a part of EPA's electronic docket and comment system. You may access RME at <http://docket.epa.gov/rmepub/index.jsp> to review associated documents and submit comments. Once in the system, select "quick search," then key in the appropriate RME Docket identification number.

You may also access this Federal Register document electronically through the Regulations.gov web site located at <http://www.regulations.gov> where you can find, review, and submit comments on Federal rules that have been published in the Federal Register, the Government's legal newspaper, and are open for comment.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a

reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

3. *Copies of the State submittal and EPA's technical support document are also available for public inspection during normal business hours, by appointment at the State Air Agency.* The Bureau of Air Quality Control, Department of Environmental Protection, First Floor of the Tyson Building, Augusta Mental Health Institute Complex, Augusta, ME 04333-0017.

B. *How and To Whom Do I Submit Comments?*

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number by including the text “**Public comment on proposed rulemaking R01-OAR-2004-ME-0001**” in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked “late.” EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM.

This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in Regional Material EDocket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *Regional Material EDocket (RME)*. Your use of EPA's Regional Material EDocket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to RME at <http://docket.epa.gov/rmepub/index.jsp>, and follow the online instructions for submitting comments. Once in the RME system, select "quick search," and then key in RME Docket ID Number R01-OAR-2004-ME-0001. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by electronic mail (e-mail) to brown.dan@epa.gov, please include the text "**Public comment on proposed rulemaking R01-OAR-2004-ME-0001**" in the subject line. EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly without going through Regulations.gov, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket.

iii. *Regulations.gov*. Your use of Regulations.gov is an alternative method of submitting electronic comments to EPA. Go directly to Regulations.gov at <http://www.regulations.gov> , then click on the button “TO SEARCH FOR REGULATIONS CLICK HERE”, and select Environmental Protection Agency as Agency name to search on. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an “anonymous access” system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

iv. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Section 2, directly below. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail*. Send your comments to: Dan Brown, Acting Unit Manager, Air Permits, Toxics and Indoor Program Unit, Office of Ecosystem Protection (mail code CAP)] U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100, Boston, MA 02114-2023. Please include the text “**Public comment on proposed rulemaking R01-OAR-2004-ME-0001**” in the subject line on the first page of your comment

3. *By Hand Delivery or Courier*. Deliver your comments to: Dan Brown, Acting Unit Manager, Air Permits, Toxics and Indoor Program Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street,

Suite 11th floor, (CAP), Boston, MA 02114-2023. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding federal Holidays..

C. How Should I Submit CBI To the Agency?

Do not submit information that you consider to be CBI electronically to EPA. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official public regional rulemaking file. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public file and available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the FOR FURTHER INFORMATION CONTACT section.

II. Rulemaking Information

Organization of this document. The following outline is provided to aid in locating

information in this preamble.

SUMMARY OF SIP REVISION

- A. What led to this SIP revision?**
- B. What will this SIP revision do?**
- C. What are PSD increments?**
- D. What PSD increments is Maine adopting?**
- E. Does this action affect the attainment status of any area in Maine?**
- F. Is this action affected by the decision in American Trucking Associations, Inc. v. U.S. EPA?**

III. FINAL ACTION

IV. STATUTORY AND EXECUTIVE ORDER REVIEWS

On August 23, 1996, the State of Maine formally submitted a request to revise its State Implementation Plan (SIP). The SIP revision consists of changes to the Maine Ambient Air Quality Standards at Chapter 110 of the Department of Environmental Protection regulations in the Code of Maine Rules ("Chapter 110").

SUMMARY OF SIP REVISION

A. What led to this SIP revision?

On July 1, 1987, EPA promulgated a new rule (52 FR 24634) regarding the primary (health) and secondary (public welfare) National Ambient Air Quality Standards (NAAQS) for particulate matter (40 CFR 50.6). Under this rule, particulate matter is measured in the ambient air as PM₁₀, or particles with a mean aerodynamic diameter of 10 microns or less, rather than as

TSP, for the purposes of determining compliance with the NAAQS for particulate matter. Maine revised Chapter 110 in response to this new rule and submitted the revised Chapter 110 as a SIP revision in October 1989. EPA approved this SIP revision on March 23, 1993 (58 FR 15422), making the PM10 standard in the Maine Ambient Air Quality Standards (MAAQS) program federally enforceable.

On June 3, 1993, EPA promulgated a rule (58 FR 31622) replacing TSP with PM10 as the measure of particulate matter in the prevention of significant deterioration (PSD) program (40 CFR 51.166(c)). On July 24, 1996, Maine again revised Chapter 110 in response to this rule. Maine submitted the revised Chapter 110 as a SIP revision on August 23, 1996. By this final direct rulemaking, EPA is approving this SIP revision, making the PM10 standard in the PSD program federally enforceable.

B. What will this SIP revision do?

This SIP revision amends Section 10 of Chapter 110, which establishes PSD increments, or the maximum increases in concentrations of certain pollutants allowed in areas subject to the PSD program. Before revising Chapter 110 in July 1996, Maine used TSP as the indicator for particulate matter in the PSD program. After revising Chapter 110 on July 24, 1996, Maine began using PM10 to determine compliance with PSD increments as a matter of state law and continued using TSP to determine compliance with PSD increments under its SIP. This direct final rulemaking establishes PM10 as the sole indicator for the PSD program. Maine will continue to use PM10 to determine compliance with the NAAQS and MAAQS for particulate matter.

C. What are PSD increments?

PSD increments are the maximum increases over a baseline concentration of certain air pollutants that are allowed in attainment areas. The PSD program allows increases in the ambient air concentration of a pollutant in an attainment area as long as the resulting total concentration does not exceed the sum of the baseline and increment. The sum of the baseline and increment is always smaller than concentration established by the NAAQS. Increments differ depending on the classification of an area. Class I areas, typically national parks, have smaller increments than Class II areas, and Class II areas have smaller increments than Class III areas, typically areas with a greater concentration of industry. There are no Class III areas in Maine.

D. What PSD increments is Maine adopting?

In adopting revisions to Chapter 110 on July 24, 1996, Maine made its Ambient Air Quality Standards identical to those established at 40 CFR 51.166(c). By this final direct rulemaking, these revisions become part of the SIP and, thereby, federally enforceable. In particular, Class I areas are allowed an annual increment of $4 \mu\text{g}/\text{m}^3$ and 24-hour increment of $8 \mu\text{g}/\text{m}^3$, Class II areas are allowed an annual increment of $17 \mu\text{g}/\text{m}^3$ and 24-hour increment of $30 \mu\text{g}/\text{m}^3$, and Class III areas are allowed an annual increment of $34 \mu\text{g}/\text{m}^3$ and 24-hour increment of $60 \mu\text{g}/\text{m}^3$, where all annual increments are determined using an arithmetic, rather than geometric, annual mean.

E. Does this action affect the attainment status of any area in Maine?

No. 40 C.F.R. 81.320 lists the attainment status of all areas in Maine as either “better than national standards” or “cannot be classified” for both TSP and PM₁₀.

F. Is this action affected by the decision in American Trucking Associations, Inc. v. U.S. EPA?

No. This action is not affected by the decision in American Trucking Associations, Inc. v. U.S. EPA, 175 F.3d 1027 (D.C. Cir.1999), *rev'd on other grounds*, 531 U.S. 457 (2001). The American Trucking decision addressed, among other things, the particulate matter rule promulgated by EPA in July 1997 (62 FR 38652) that established a fine particulates NAAQS standard and redefined the PM10 NAAQS. In its decision, the D.C. Circuit Court vacated the redefined PM10 standard, leaving the July 1987 PM10 standard intact. The PM10 standard used in the PSD increments approved by this rulemaking is consistent with the NAAQS PM10 standard left intact by American Trucking.

III. FINAL ACTION

EPA is approving the SIP revision submitted by the State of Maine on August 23, 1996. EPA is publishing this action without prior proposal because the Agency views this rulemaking as noncontroversial and anticipates no adverse comments. EPA is publishing in the proposed rules section of this Federal Register a separate document containing a proposed rulemaking to approve this SIP. Should relevant adverse comments be filed, they will be considered comments to this separate proposed rulemaking. This direct final rule will be effective **[Insert date 60 days from date of publication in the Federal Register]** without further notice unless the Agency receives relevant adverse comments by **[Insert date 30 days from date of publication in the Federal Register]**.

If EPA receives such comments, it will publish a notice withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. Only parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on **[Insert date 60 days from date of publication in the Federal Register]** and no further action will be taken on the proposed rule. If EPA receives adverse comments on a section, paragraph, or other portion of this rule that may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. STATUTORY AND EXECUTIVE ORDER REVIEWS

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the

Unfunded Mandates Reform Act of 1995 (Public Law 104-4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C.

272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register]**. Interested parties should comment in response to the proposed rule rather than petition for judicial review, unless the objection arises after the comment period allowed for in the proposal. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter, Reporting and recordkeeping requirements.

2-5-04

Dated:

Robert W. Varney

Robert W. Varney,
Regional Administrator,
EPA New England.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52 - [AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart U - Maine

2. Section 52.1020 is amended by adding paragraph (c)(52) to read as follows:

§ 52.1020 Identification of plan

* * * * *

(c) * * *

(52) Revisions to the State Implementation Plan submitted by the Maine Department of Environmental Protection on August 23, 1996.

(i) Incorporation by reference.

(A) Chapter 110 of the Maine Department of Environmental Protection regulations, "Ambient Air Quality Standards," adopted by the Board of Environmental Protection on July 24, 1996, and effective August 6, 1996.

3. In § 52.1031, Table 52.1031 is amended by adding new entries to existing state citations for Chapter 110, "Ambient Air Quality Standards," to read as follows:

§ 52.1031 - EPA - approved Maine Regulations

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Table 52.1031 - EPA-Approved Rules and Regulations

State citation	Title/Subject	Date adopted by State	Date approved by EPA	Federal Register citation	52.1020	
*	*	*	*	*	*	*
Chapter 110	Ambient Air Quality Standards	July 24, 1996	[Insert date of publica- tion]	[Insert <u>FR</u> citation from published date]	c(52)	Adopts PSD increments based on PM10, in place of increments based on TSP
*	*	*	*	*	*	*

Note. – 1. The regulations are effective statewide unless stated otherwise in comments section.